

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

BUCHER AEROSPACE CORPORATION,  
  
Plaintiff,  
  
v.  
  
BOMBARDIER AEROSPACE  
CORPORATION,  
  
Defendant.

**The Honorable Barbara J. Rothstein**

NO. 2:22-cv-01238-BJR

**STIPULATED PROTECTIVE  
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material may include documents that contain proprietary or trade secret information and/or confidential financial information. “Highly Confidential” material includes



1 material that a producing party acting in good faith believes that disclosure of such material is  
2 substantially likely to cause injury to the producing party. Confidentiality as to such documents  
3 and materials shall be maintained both during and after case disposition. The parties retain the  
4 right to object to and challenge confidential designations, regardless of whether designated  
5 documents and things are in these categories.

6 3. SCOPE

7 The protections conferred by this agreement cover not only Confidential and Highly  
8 Confidential material, but also any information copied or extracted from Confidential and  
9 Highly Confidential material and all copies, excerpts, summaries, or compilations of  
10 Confidential and Highly Confidential material.

11 However, the protections conferred by this agreement do not cover information that is  
12 in the public domain or becomes part of the public domain through trial or otherwise. The extra  
13 protections and restrictions conferred by this agreement pertaining to Highly Confidential  
14 material do not cover information that has already been shared with a party to this action.

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16 4.1 Basic Principles. A receiving party may use Confidential and Highly  
17 Confidential material that is disclosed or produced by another party only for prosecuting,  
18 defending, or attempting to settle this litigation. Confidential and Highly Confidential material  
19 may be disclosed only to the categories of persons and under the conditions described in this  
20 agreement. Confidential and Highly Confidential material must be stored and maintained by a  
21 receiving party at a location and in a secure manner that ensures that access is limited to the  
22 persons authorized under this agreement.

23 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
24 ordered by the court or permitted in writing by the designating party, a receiving party may  
25 disclose any Confidential material only to:

26 (a) the receiving party's counsel of record in this action, as well as



1 employees of counsel to whom it is reasonably necessary to disclose the information for this  
2 litigation;

3 (b) the officers, directors, and employees (including in house counsel) of the  
4 receiving party to whom disclosure is reasonably necessary for this litigation;

5 (c) experts and consultants to whom disclosure is reasonably necessary for  
6 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
7 (Exhibit A);

8 (d) the court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the duplication  
10 of Confidential material, provided that counsel for the party retaining the copy or imaging  
11 service instructs the service not to disclose any Confidential material to third parties and to  
12 immediately return all originals and copies of any Confidential material;

13 (f) witnesses in the action to whom disclosure is reasonably necessary and  
14 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

15 (g) the author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the information.

17 4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
18 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
19 designating party, a receiving party may disclose any Highly Confidential material only to:

20 (a) the receiving party’s counsel of record in this action, as well as  
21 employees of counsel to whom it is reasonably necessary to disclose the information for this  
22 litigation;

23 (b) experts and consultants to whom disclosure is reasonably necessary for  
24 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
25 (Exhibit A);

26 (c) the court, court personnel, and court reporters and their staff;



(d) copy or imaging services retained by counsel to assist in the duplication of Highly Confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any Highly Confidential material to third parties and to immediately return all originals and copies of any Highly Confidential material; and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.4 Filing Confidential and Highly Confidential Material. Before filing Confidential or Highly Confidential material, the filing party shall confer with the designating party to determine whether the designating party will remove the Confidential or Highly Confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions. If a non-



1 designating party shows that any such designations were clearly unjustified or made for an  
2 improper purpose, the non-designating party shall be entitled to file a motion seeking an award  
3 for its attorneys' fees and costs related to the improper designation, subject to the Court's  
4 discretion.

5 If it comes to a designating party's attention that information or items that it designated  
6 for protection do not qualify for protection, the designating party must promptly notify all other  
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
9 agreement or as otherwise stipulated or ordered, disclosure or discovery material that qualifies  
10 for protection under this agreement must be clearly so designated before or when the material  
11 is disclosed or produced.

12 (a) Information in documentary form: (e.g., paper or electronic documents  
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
15 contains Confidential material, and "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
16 ONLY" to each page that contains Highly Confidential material. If only a portion or portions  
17 of the material on a page qualifies for protection, the producing party also must clearly identify  
18 the protected portion(s) (e.g., by making appropriate markings in the margins).

19 (b) Testimony given in deposition or in other pretrial proceedings: the  
20 parties and any participating non-parties must identify on the record, during the deposition or  
21 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate  
22 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days  
23 after receiving the transcript of the deposition or other pretrial proceeding, designate portions  
24 of the transcript, or exhibits thereto, as Confidential or Highly Confidential. If a party or non-  
25 party desires to protect Confidential or Highly Confidential information at trial, the issue should  
26 be addressed during the pre-trial conference.



1 (c) Other tangible items: the producing party must affix in a prominent place  
 2 on the exterior of the container or containers in which the information or item is stored the word  
 3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as  
 4 applicable. If only a portion or portions of the information or item warrant protection, the  
 5 producing party, to the extent practicable, shall identify the protected portion(s).

6 (d) Inadvertent Failures to Designate: If timely corrected, an inadvertent  
 7 failure to designate qualified information or items does not, standing alone, waive the  
 8 designating party’s right to secure protection under this agreement for such material. Upon  
 9 timely correction of a designation, the receiving party must make reasonable efforts to ensure  
 10 that the material is treated in accordance with the provisions of this agreement.

## 11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 13 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 17 original designation is disclosed. The parties shall not, however, challenge a confidentiality  
 18 provision after the case has resolved.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 20 regarding Confidential or Highly Confidential designations without court involvement. Any  
 21 motion regarding Confidential or Highly Confidential designations or for a protective order  
 22 must include a certification, in the motion or in a declaration or affidavit, that the movant has  
 23 engaged in a good faith meet and confer conference with other affected parties in an effort to  
 24 resolve the dispute without court action. The certification must list the date, manner, and  
 25 participants to the conference. A good faith effort to confer requires a face-to-face meeting or  
 26 a telephone conference.



6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as Confidential or Highly Confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential or Highly Confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential or Highly Confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom



1 unauthorized disclosures were made of all the terms of this agreement, and (d) request that such  
 2 person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached  
 3 hereto as Exhibit A.

4 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 5 MATERIAL

6 When a producing party gives notice to receiving parties that certain inadvertently  
 7 produced material is subject to a claim of privilege or other protection, the obligations of the  
 8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
 9 provision is not intended to modify whatever procedure may be established in an e-discovery  
 10 order or agreement that provides for production without prior privilege review. The parties  
 11 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each receiving  
 14 party is under an obligation to delete all Confidential and Highly Confidential material,  
 15 including all copies, extracts, and summaries.

16 The confidentiality obligations imposed by this agreement shall remain in effect until a  
 17 designating party agrees otherwise in writing or a court orders otherwise.

18 DATED this 13th day of March, 2023.

19  
 20 By s/Christopher R. Conley

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 22 Roger J. Kindley, WSBA #11875  
 23 Attorneys for Plaintiff  
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*Attorneys for Bombardier Aerospace Corporation*



1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7  
8 DATED this 13th day of March, 2023.

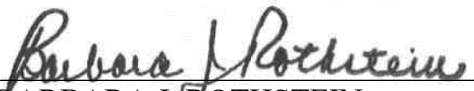
9   
10 BARBARA J. ROTHSTEIN  
11 UNITED STATES DISTRICT JUDGE  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty  
of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Western District of Washington on [date]  
in the case of *Bucher Aerospace Corporation v. Bombardier Aerospace Corporation*, Case  
No. 2:22-cv-01238-BJR. I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the provisions of this  
Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_